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Military Affairs - Veterans' Preference Act - Statutory Construction

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MILITARY AFFAIRS — VETERANS' PREFERENCE ACT — STATUTORY CONSTRUCTION — The Commonwealth Court of Pennsylvania held that honorably discharged veterans of the United States Reserves or National Guard are eligible for employment preference in public positions only when they fulfill their complete military obligations.

Sicuro v. City of Pittsburgh, 684 A.2d 232 (Pa. Commw. Ct. 1996).

After issuing a December 1993 public announcement and conducting civil service examinations, the City of Pittsburgh, on July 2, 1994, posted¹ a listing of candidates eligible for entry-level firefighter appointments.² Inclusion on this eligibility list, a ranked-by-score enumeration of candidates who successfully completed the examinations, represented the sole vehicle for its members to achieve permanent appointments as City of Pittsburgh firefighters.³ The law strictly prescribes the City's method of making firefighter appointments: it must select the candidate who attained the highest rank on the list, bypassing him/her only for cause.⁴ Hence, a candidate's likelihood of attaining a firefighter

1. "Posting" is the act of making information accessible to the public by its conspicuous display. BLACK'S LAW DICTIONARY 1167 (6th ed. 1990). Pittsburgh must post the names and scores of all applicants who passed eligibility tests for competitively awarded positions. General Civil Service Act, 53 PA. CON. STAT. § 23441 (1907).

2. *Sicuro v. City of Pittsburgh*, 684 A.2d 232, 233 (Pa. Commw. Ct. 1996). As a Commonwealth of Pennsylvania city of the second class, Pittsburgh must appoint firefighters in accordance with the provisions of the Firemen's Civil Service Statute, codified at 53 PA. CON. STAT. §§ 23491-23498 (1939). The City's firefighter hiring protocols are also governed by the provisions of the General Civil Service Act, 53 PA. CON. STAT. §§ 23431-23462 (1907), when those provisions are not in conflict with the Firemen's Civil Service Statute. See *Civil Serv. Comm'n, City of Pittsburgh v. Paieski*, 559 A.2d 121, 125-126 (Pa. Commw. Ct. 1989) (The City may not rely on provisions of the General Civil Service Act when a provision of the Policemen's Civil Service Statute (codified at 53 PA. CON. STAT. §§ 23531-23540 (1951)) addresses the specific matter.).

3. 53 PA. CON. STAT. § 23493.1 (1939). Pittsburgh has no authority to prescribe rules resulting in an alternate method of firefighter appointment. *Id.* at § 23492. The General Civil Service Act allows the City to appoint firefighters without the use of an eligibility list only during a time of crisis and only for a period not to exceed three months. 53 PA. CON. STAT. §§ 23447, 23448 (1907).

4. 53 PA. CON. STAT. § 23493.1 (1939). Although the Firemen's Civil Service Statute does not define "cause," the General Civil Service Act empowers the Civil Service Commission to refuse certification to a candidate determined unfit because of inappropriate qualifications, physical inability to perform necessary job duties, addiction to drugs or alcohol, criminal conviction, participation in "infamous or notoriously disgraceful conduct," previous non-economic discharge from government employment, or application fraud. 53 PA. CON. STAT. § 23442 (1907).

appointment is directly related to his/her position on the eligibility list.

As a political subdivision of the Commonwealth of Pennsylvania, Pittsburgh ("City") must apply the Veterans' Preference Act, (the "Act"), to qualified veterans who seek its competitively-awarded positions.⁵ The Act compels Pittsburgh to add a ten-point bonus (the "Bonus") to an honorably discharged soldier's⁶ raw examination score after that soldier achieves a passing examination mark.⁷ Adhering to its interpretation of the Act, the City augmented each soldier candidate's examination score with the Bonus, thereby improving each soldier candidate's list position and, as a result, his/her chance of receiving a firefighter appointment.⁸

Ralph Sicuro and five other candidates (collectively "Sicuro"), successfully completed City civil service firefighter examinations.⁹ Each validated his soldier's status before the list's posting by presenting the City with proof of honorable discharge and, as a result, received the Bonus on the posting date.¹⁰ All six soldier candidates had achieved raw examination scores of 94%; thus, the addition of the Bonus improved their eligibility list scores to 104% and positions on the list to between 35 and 60.¹¹

5. Veterans' Preference Act, 51 PA. CON. STAT. §§ 7101-7109 (1975). The Act applies to the Commonwealth's and its political subdivisions' public positions (§ 7103) and is the exclusive method for Pittsburgh's awarding employment preference for military service. *Id.* at § 7109.

6. 51 PA. CON. STAT. § 7101 (1975). The Act defines a "soldier" as one who during a time of armed conflict served in either the United States armed forces or an associated women's group, or as one who since July 27, 1953 served or later serves in such a unit. *Id.* at § 7101 (1975). In all cases, the individual must have been honorably discharged from the service to receive the ten-point veterans' preference. *Id.* See *Opinion of the Attorney General*, 1978 Op. Atty. Gen. No. 5 (veteran must have attained an honorable discharge from military service prior to enjoying the Act's preferences).

7. 51 PA. CON. STAT. § 7103 (1975). The Act requires the soldier to be qualified for the applied-for position prior to earning the Bonus. See *Brickhouse v. Spring Ford Area Sch. Dist.*, 656 A.2d 480 (Pa. 1995) (veteran meeting minimum position qualifications is not entitled to automatic appointment when the hiring authority reasonably requires higher than minimum qualifications). See also *City of Pittsburgh, Civil Serv. Comm'n v. Weger*, 505 A.2d 398 (Pa. Commw. Ct. 1986) (public position's pre-employment requirements are valid so long as they are not arbitrarily determined); *Eggleston v. City of Philadelphia*, 110 A.2d 183 (Pa. 1955) (veteran must satisfy a position's qualifications in order to receive appointment preference).

8. *Sicuro*, 684 A.2d at 233, 234.

9. *Id.* at 234.

10. *Id.* By December 27, 1993 (the application deadline), Sicuro validated his soldier's status by submitting his form DD-214, a Department of Defense official statement of military service that identifies, among other things, the dates served and type of discharged attained. Record at 54.

11. *Sicuro v. City of Pittsburgh*, No. GD 95-12924 (C.P. Ct. Allegheny County, Nov. 2,

Sicuro brought an action in the Court of Common Pleas of Allegheny County seeking a declaratory judgment¹² concerning two of the City's veterans' preference award policies.¹³ First, he contended that the City's practice of allowing an applicant to submit official military separation and discharge papers at any time and still be eligible for the veterans' preference (even if the submission occurred after the list's posting date) violated the Act's requirement of fixing a veteran applicant's Bonus eligibility at the time of the civil service examination.¹⁴ Second, and the main thrust of the action, Sicuro contested the City's practice of awarding veterans' preference to candidates who completed and received honorable discharges from only three to four months of active duty Reserve or National Guard (collectively "Reserve"), training but who remained obligated to part-time Reserve duty.¹⁵ Sicuro argued that candidates with a mere three to four months of active service and an ongoing military commitment met neither the Act's definition of "soldier" nor its intent. He further argued that the value of such military service is not reasonably related to the Act's purpose.¹⁶

At trial, the City's Motion to Join Indispensable Parties¹⁷ identified fourteen candidates (collectively "Appellants") who held current Reserve commitments but received the Bonus as a result of

1995) at Appendix A.

12. A "declaratory judgment" is appropriate when two antagonistic parties present an issue promising inevitable litigation, which results in the court's expressing the rights of individual parties. PENNSYLVANIA LAW ENCYCLOPEDIA 368, 373 (1970).

13. *Sicuro*, No. GD 95-12924 at 1.

14. *Sicuro*, 684 A.2d at 234. The City's actual practice contradicted its stated policy as listed on its firefighter recruitment public announcement, because the City accepted discharge and separation papers after the application deadline. Record at 27. The policy's pertinent wording is as follows: "Veterans' preference points will be awarded to eligible candidates who achieve a Final passing score. Your, or your spouse's (if deceased or disabled) *original* discharge and separation papers (DD-214) must be received by the Department of Personnel and Civil Service Commission at the time of filing application." Appellants' Brief at 6, *Sicuro v. City of Pittsburgh*, 684 A.2d 232 (Pa. Commw. Ct. 1996) (emphasis in original). This contradiction, however, was not an issue before the court.

15. *Sicuro*, 684 A.2d at 234. For example, the City awarded veterans' preference to a candidate who committed to Reserve duty for a term of eight years, with the first three months of that commitment devoted to full-time active training and the remainder requiring service of one weekend per month and two weeks per year. *Sicuro*, No. GD 95-12924 at 4. The City's practice awarded the veterans' preference at the end of the three month training regardless of the candidate's remaining service term. *Sicuro*, No. GD 95-12924 at 4.

16. *Sicuro*, 684 A.2d at 234.

17. "Indispensable parties" are those who must be joined to an action because, given their interest in the matter, no judicial determination can be adequate without their participation or awareness. BLACK'S LAW DICTIONARY 773 (6th ed. 1990).

their three to four months of military training.¹⁸ Appellants' records of Reserve service are summarized as follows: two enlisted after the civil service examinations but prior to the list's posting; twelve enlisted after the list's posting; none received an honorable discharge prior to the list's posting; and all had continuing military commitments at the point of receiving the veterans' preference.¹⁹

As there existed no genuine issues of material fact, the trial court considered each party's Motion for Summary Judgment.²⁰ The trial court granted Sicuro's motion and denied the City's.²¹ In doing so, the trial court held that Reservists and National Guard members (collectively "Reservists") are not eligible for veterans' preference until they have completed their minimum obligations to their respective military branches.²² Further, the opinion, but not the order, concluded that candidates whose minimum military obligations end after the list's posting, but prior to the list's expiration, should be awarded the Bonus.²³ For example, firefighter candidates could submit military separation and discharge papers

18. *Sicuro*, No. GD 95-12924 at 2. Without the Bonus, the Appellants' ranking would have been from 168 to 590; with the Bonus, their rankings increased from 4 to 144. Record at 129. With the Bonus, five appellants were to be appointed (absent cause) before the Appellees. *Id.* at 128-129. See *supra* note 4 and accompanying text.

19. *Sicuro*, 684 A.2d at 234.

20. *Id.* "Summary judgment" is a pre-trial request to the court that, when granted, results in a judicial determination without an actual trial; it is appropriate only when both parties agree to the matter's material facts and do not differ as to inferences that spring from those facts. BLACK'S LAW DICTIONARY 1435 (6th ed. 1990). Either or both parties may move for summary judgment after the closing of the pleadings, but the timing of the motion must not be such that it delays the trial. PA. R. CT. 68 (revised ed. 1995).

21. *Sicuro*, 684 A.2d at 234. The trial court judge had recently issued an Opinion and Order in a City of Pittsburgh veterans' preference matter, holding that the veterans' preference provision regarding promotional examinations, regardless of the Act's clear language, violates the prohibition against special privileges in Article 1, § 17 of the Pennsylvania Constitution. *City of Pittsburgh v. Fraternal Order of Police, Fort Pitt Lodge No. 1*, No. GD 94-017598 (C.P. Ct. Allegheny County, Nov. 9, 1994). In arriving at this holding, the court relied on many of the cases utilized in the *Sicuro* opinion. *Id.* at 4-14. See *Graham v. Schmid*, 2 A.2d 701 (Pa. 1938); *Maurer v. O'Neill*, 83 A.2d 382 (Pa. 1951); *Brickhouse v. Spring Ford Sch. Dist.*, 625 A.2d 711 (Pa. Commw. Ct. 1993), *overruled by* 656 A.2d 480 (Pa. 1995); *Eggleston v. City of Philadelphia*, 110 A.2d 183 (Pa. 1955). See also *Williams v. Civil Serv. Comm'n*, 300 A.2d 799 (Pa. Commw. Ct. 1973) (holding that the Bonus is reasonably related to effective entry-level public service and is, therefore, constitutional); *Northeastern Educ. Intermediate Unit v. Stephens*, 510 A.2d 1267 (Pa. Commw. Ct. 1986) (holding that military time counts toward seniority for furlough purposes); *Taxpayers v. Carbondale*, 553 A.2d 119 (Pa. Commw. Ct. 1989) (holding that veteran must be qualified prior to receiving the Bonus); *Carter v. Philadelphia*, 989 F.2d 117 (3d Cir. 1993) (holding that a veteran's right to statutory promotional preference is constitutionally protected as long as the veteran is qualified).

22. *Sicuro*, 684 A.2d at 234, 235.

23. *Sicuro*, No. GD 95-12924 at 9.

after the examination date and still receive the Bonus.²⁴

To reach its conclusion, the court analyzed *Herskovitz v. State Civil Svc. Comm'n*, a case upon which both parties placed great reliance.²⁵ In *Herskovitz*, the Commonwealth Court of Pennsylvania held that honorably discharged Reservists satisfy the Act's definition of "soldier," and are, therefore, eligible for the Bonus as a result of their military training and service.²⁶ The City interpreted this holding as extending Bonus eligibility to Reservists who had completed their military training commitment.²⁷ Sicuro argued that because each *Herskovitz* petitioner had completed his training and part-time service obligation, the *Herskovitz* court intended Reservists to be Bonus-eligible only upon their full separation from the Reserves.²⁸

The *Sicuro* trial court distinguished the *Herskovitz* petitioners from the fourteen Reservists in *Sicuro*.²⁹ Noting that *Herskovitz* defined "training time and service," and its Petitioners fully completed such training time and service, the court concluded that attaining the "soldier" distinction is not a function of one's merely completing training but of his/her completing the full service obligation.³⁰

The trial court found further grounds to rule against the City's practice in the holdings of *Graham v. Schmid*³¹ and *Maurer v. O'Neill*.³² In *Schmid*, the Supreme Court of Pennsylvania formulated the test by which veterans' preference provisions are to be constitutionally judged: when the preference is reasonably related to the object sought (proper discharge of government duties), the provision is constitutionally valid; but when it has no such reasonable relationship, the provision is arbitrary and

24. *Id.* Competitive eligibility lists generated as a result of the City's Civil Service examination are valid for not less than one year but not greater than three years. 53 PA. CON. STAT. § 23445 (1907).

25. *Sicuro*, 684 A.2d at 235 (citing *Herskovitz v. State Civil Serv. Comm'n*, 534 A.2d 160 (Pa. Commw. Ct. 1987)). See *infra* notes 77-89 and accompanying text.

26. *Herskovitz*, 534 A.2d at 161-62.

27. *Sicuro*, 684 A.2d at 235-36. See *Sicuro*, No. GD 95-12924 at 9-10.

28. *Sicuro*, 684 A.2d at 236.

29. *Sicuro*, No. GD 95-12924 at 11.

30. *Id.* at 11-12 (quoting *Herskovitz v. State Civil Serv. Comm'n*, 534 A.2d 160 (Pa. Commw. Ct. 1987)).

31. *Graham v. Schmid*, 3 A.2d 701 (Pa. 1938). See *infra* notes 56-67 and accompanying text.

32. *Maurer v. O'Neill*, 83 A.2d 382 (Pa. 1951). See *infra* notes 68-74 and accompanying text.

constitutionally offensive.³³ Thirteen years later, the supreme court in *O'Neill* upheld the *Schmid* test as the touchstone of veterans' preference constitutionality.³⁴

Noting that *Schmid* and *O'Neill* represent the current state of the law concerning the Act's constitutionality, the *Sicuro* trial court applied these holdings and concluded that awarding veterans' preference in return for three to four months of military training "places too high a value on this military training."³⁵ The trial court found the City's practice eliminates the Act's purpose of distinguishing veterans and ruled that one must complete his/her full Reserve or National Guard obligation of training and service to receive the preference.³⁶

Now stripped of their veterans' preference points, the Appellants appealed to the Commonwealth Court of Pennsylvania, contending that the trial court either abused its discretion or committed an error of law.³⁷ Applying the trial court's reasoning and citing other grounds, the commonwealth court affirmed.³⁸

The commonwealth court reviewed the *Herskovitz* petitioners' military service records and, as did the court below, distinguished those Petitioners from the Appellants in the present case based on training time and full service obligation.³⁹ Through strict construction,⁴⁰ the court interpreted the Act according to its plain meaning and found a duty to invalidate applications not consistent with its language.⁴¹ Analyzing the Act's definition of "soldier," the

33. *Schmid*, 3 A.2d at 704.

34. *O'Neill*, 83 A.2d at 383.

35. *Sicuro*, No. GD 95-12924 at 14-16. The court noted *Schmid's* precedential prominence by citing it as "the landmark case" in veterans' preference in the recent Supreme Court of Pennsylvania's decision in *Brickhouse*, 656 A.2d 480 (Pa. 1995) (veteran meeting minimum position qualifications is not entitled to automatic appointment when the hiring authority reasonably requires higher than minimum qualifications).

36. *Sicuro*, No. GD 95-12924 at 19.

37. *Sicuro*, 684 A.2d at 235. Judge Flaherty wrote the opinion in which Judge Kelley and Senior Judge Rodgers joined. The commonwealth court cited *Salerno v. LaBarr*, 632 A.2d 1002 (Pa. Commw. Ct. 1993) as authority for its holding that the standard of review of a trial court's grant of summary judgment is limited to abuse of discretion or error of law. *Sicuro*, 684 A.2d at 235.

38. *Id.* at 237.

39. *Id.* at 236.

40. "Strict construction" is a method of statutory interpretation requiring the reviewer to analyze a law according to the fair meaning of its words and without inserting a different meaning to bring about an equitable solution. BLACK'S LAW DICTIONARY 1422 (6th ed. 1990). Strict construction is codified in Pennsylvania under the Statutory Construction Act, 1 PA. CON. STAT. § 1921 (1975). See *infra* note 82 for the full text of this act.

41. *Id.* at 237 (citing *Eggleston v. City of Philadelphia*, 110 A.2d 183 (Pa. 1955) (holding that the Act of 1945 applies to candidates seeking appointment as unskilled

court noted that the legislated requirement is that veterans' preference eligibility is tied to one's honorable discharge from armed forces service.⁴² The court, applying a plain meaning standard, concluded that "service" is defined as completion of the full Reserve commitment, not merely the active duty training associated with those branches.⁴³ Holding otherwise, the court found, would result in awarding the Bonus to those only beginning their military tenures, when the language of the Act contemplates rewarding those who have fulfilled their obligations, a result the court deemed inconsistent with a strict interpretation of the Act.⁴⁴

The *Sicuro* court inserted its conclusion that the legislature intended veterans' preference to apply only to those without continuing military obligations into the *Schmid* test.⁴⁵ *Schmid* requires a reasonable relationship between the preference (as a reward for military service) and its goal (effective government functioning). Because current Reservists have yet to fulfill their military commitments, the court deduced that no such relationship exists.⁴⁶ This failure of the reasonable relationship test characterized active military service members' receipt of veterans' preference as violative of public policy and provided the grounds for the court to strike down the practice.⁴⁷

In facing the final issue of whether a veteran achieving "soldier" status after the examination is entitled to the Bonus, the *Sicuro* court broke ranks with the trial court by answering in the

laborers). The *Egglestown* court cited its authority for strictly construing a veterans' preference act as *Preferential Treatment For War Veterans No.3*, 45 D. & C. 311, 315 (1945) (The Commonwealth Attorney General's office provided the State Civil Service Commission with a legal opinion concerning the Veterans' Preference Act of August 5, 1941, Pub. L. No. 872, advising that the 1941 Act applies to appointments to the Civil Service Commission's personnel director, the hiring authority may choose either veteran when two are under appointment consideration, the hiring authority may appoint an eligibility list's low-placed veteran when no veteran is ranked among the top three list members, and the preference applies to provisional appointment.).

42. *Sicuro*, 684 A.2d at 236 (citing 51 PA. CON. STAT. § 7101 (1975)).

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* The court stated that a reward-for-military-service justified award of the Bonus. *Id.* The latter half of the statute cited the "discipline and experience represented by his military training and for the loyalty and public spirit demonstrated by his service for the preservation of his country." 51 PA. CON. STAT. § 7102 (1975). The court noted that *Schmid* and *O'Neill* remain the proper precedents for veterans' preference analysis because they had been upheld in *Hoffman v. Whitehall*, 677 A.2d 1200 (Pa. 1996) (holding that the veterans' preference, as applied to promotional exams, provides an unreasonable assessment of the worth of military experience and is, therefore, unconstitutional).

47. *Sicuro*, 684 A.2d at 236 (citing *Graham v. Schmid*, 3 A.2d at 704 (Pa. 1938)).

negative.⁴⁸ Again seeking the legislature's intent by applying the letter of the statute's words, the court identified three Act provisions that clearly set the Bonus award at the time of the examination and not beyond.⁴⁹ In light of the three separate references, the court viewed a post-examination Bonus award as an expansion of the Act, a result it refused to condone.⁵⁰

Through statutes dating back to at least 1887, Pennsylvania has long granted preference to military veterans seeking public employment.⁵¹ Application of veterans' preference has resulted in a variety of challenges, including the constitutionality of preference for promotion candidates,⁵² the adverse impact on a non-veteran's ability to secure public employment,⁵³ the relationship between the preference and collective bargaining appointment provisions,⁵⁴ and

48. *Id.* at 237.

49. *Id.* at 236-37. The court cited the following Act provisions as fixing the Bonus award at the time of the examination: "When any soldier shall take any civil service appointment . . . examination . . . he shall be given credit in the manner hereinafter provided," 51 PA. CON. STAT. § 7102(a) (1975); "No soldier taking any civil service . . . examination shall be required to furnish . . . his former rank or service serial number," 51 PA. CON. STAT. § 7102(b) (1975); and "Whenever a soldier shall successfully pass a civil service appointment . . . examination . . . such soldier's examination shall be marked or graded an additional ten points above the mark or grade credited for the examination." 51 PA. CON. STAT. § 7103(a) (1975).

50. *Sicuro*, 684 A.2d at 237.

51. The Act of May 19, 1887, Pub. L. No. 132 provided preference for public positions to Civil War veterans who demonstrated compliance with the position's qualifications.

52. *See Hoffman v. Township of Whitehall*, 677 A.2d 1200 (Pa. 1996). The *Hoffman* court reviewed a police detective's contention that the Act compelled the township to add a ten-point preference to his lieutenant promotional examination score. *Hoffman*, 677 A.2d at 1201. Upholding *O'Neill*, the Supreme Court of Pennsylvania held that the promotional preference provision of the Act was an unreasonable assessment of the value of military service and, therefore, arbitrary. *Hoffman*, 677 A.2d at 1203. *See Maurer v. O'Neill*, 83 A.2d 382 (Pa. 1951); *City of Pittsburgh v. Fraternal Order of Police*, GD No. 94-017598 (C.P. Ct. Allegheny County, Nov. 9, 1994).

53. *See Feinermann v. Jones*, 356 F. Supp. 252 (M.D. Pa. 1973). In *Feinermann*, a female with the highest score on the Department of Education's Information Writer II civil service examination was not appointed because the Bonus propelled five other candidates to higher final scores. *Feinermann*, 356 F. Supp. at 256-57. The United States District Court for the Middle District of Pennsylvania rejected the argument that public employment is a fundamental right or interest, upholding veterans' preference by the less stringent rational basis test — that the preference was reasonably related to a permissible legislative purpose. *Id.* at 258-59. The *Feinermann* court also held that the justifications for veterans' preference — recognition for experience, discipline, and loyalty; reward for military service; and rehabilitation assistance — defeat a charge of practical discrimination against females. *Id.* at 262. *See also Personnel Adm'r v. Feeney*, 442 U.S. 256 (1979) (holding that a Massachusetts law preferring veterans in state civil service employment was not implemented with a discriminatory purpose against females because any person, including a female, could enjoy its benefit. *Feeney*, 442 U.S. at 279).

54. *See Belle Vernon Sch. Dist. v. Teamsters*, 670 A.2d 1201, 1204 (Pa. Commw. Ct.

the absolute nature of the preference.⁵⁵ Pennsylvania courts adjudicated each matter by analyzing the issue within the *Schmid* and *O'Neill* framework.

Schmid involved the City of Erie's refusal to apply veterans' preference provisions providing: (1) a fifteen percent bonus prior to the grading of their examinations and (2) mandatory appointment to the applied-for position when competing with non-veterans.⁵⁶ The results of an Erie examination for assistant building inspector positions placed a non-veteran highest on the eligibility list.⁵⁷ Had the City complied with the fifteen percent bonus, two veterans would have attained scores high enough for appointment consideration, and the mandatory appointment provision would have compelled the City to select one of the veterans instead of the higher-scoring non-veteran.⁵⁸

Erie argued that mandatory veteran appointments created a special class in violation of the then Article III, § 7 of the Pennsylvania Constitution, which prohibited laws granting an individual special or executive privileges or immunities.⁵⁹ The court compared this contention against the holdings of other jurisdictions, concluding that forming reasonable classifications falls within the legislature's constitutionally-granted power, while forming arbitrary ones is constitutionally prohibited.⁶⁰ Hence, so

1996) (holding that seniority-based appointments to a higher paying position included in a collective bargaining agreement do not fall under the authority of the Act).

55. See *Brickhouse v. Spring Ford Sch. Dist.*, 656 A.2d 483 (Pa. 1995). In *Brickhouse*, the Supreme Court of Pennsylvania held that a veteran does not enjoy an automatic appointment preference to a public position when he merely meets the minimum qualifications of a position; instead, the employer is entitled to demand higher-level, but reasonable, qualifications. *Id.* at 490.

56. *Graham v. Schmid*, 3 A.2d 701, 702-03 (Pa. 1938). Chief Justice Kephart wrote the opinion for a unanimous court that included Justices Barnes, Drew, Linn, Maxey, and Schaffer. As a third class city, Erie administered its employment practices in accordance with the Third Class City Law, June 23, 1931, Pub. L. No. 932. *Schmid*, 3 A.2d at 702. Section 4405 of the Third Class City Law required Erie to apply the fifteen percent bonus to veteran's scores prior to considering the examination's results, and section 4407 mandated selection of a veteran when that veteran's examination score placed among the top four highest scores. Third Class City Law, June 23, 1931. Pub. L. No. 932.

57. *Schmid*, 3 A.2d at 703 n.1.

58. *Id.* Applicants for Erie assistant building inspector positions were required to demonstrate their qualifications by passing an examination; appointments to the positions resulted from a selection of one of the top four scoring candidates. *Id.*

59. *Id.* at 703. The Article III provision regarding privileges and immunities was removed from the Pennsylvania Constitution during its 1967 revision. The repealed Article III, section 7 proscribed "any local or special law . . . granting to any corporation, association, or individual any special privilege or immunity. . . ." *Id.* at 704.

60. *Id.* at 704.

long as the practice of preferring veterans is reasonably related to the goal of enabling good government, the court declared the policy constitutionally sound.⁶¹

Applying the reasonable relationship test⁶² to the two provisions in question, an opinion written by Chief Justice Kephart for a unanimous court produced dual results. First, the court concluded that a veteran's demonstrated discipline, experience, service, loyalty, and public spirit are traits directly related to good government service.⁶³ Mandatory appointment of veterans, the court noted, is a reasonable appraisal of the worth of these traits.⁶⁴

The *Schmid* court did not uphold the fifteen percent bonus provision, its reasoning mirroring other states' treatment of veterans' preference: veterans must *qualify* for a public job before being *preferred* for it.⁶⁵ Public employees qualify through an examination process — the fifteen percent pre-scoring Bonus could change a failing score to a passing one — the court concluded the Bonus could result in the appointment of an unqualified candidate.⁶⁶ The court held that allowing an unqualified job candidate to assume a position that requires demonstrated qualifications artificially credits military experience, creating a constitutionally repugnant special and exclusive privilege.⁶⁷

The issue in *O'Neill* concerned the constitutionality of the Veterans' Preference Act's provision awarding the Bonus to veterans who successfully completed a civil service promotional examination.⁶⁸ George Braden, a non-veteran, passed the 1949

61. *Id.*

62. *See supra* note 33 and accompanying text.

63. *Schmid*, 3 A.2d at 704.

64. *Id.*

65. *Id.* at 705. *See Matter of Keymer*, 42 N.E. 667 (N.Y. Ct. App. 1896) (preference to veterans does not exempt veterans from participating in the examination process); *Opinion of the Justices*, 44 N.E. 625 (Mass. 1896) (non-mandatory veterans' preference for positions without examinations is valid); *Cook v. Mason*, 283 P. 891 (Cal. Ct. App. 1929) (holding that lowering veterans' examination passing mark by five points was improper); *State v. McDonald*, 246 N.W. 900 (Minn. 1933) (an act lowering veterans' examination passing mark is invalid).

66. *Schmid*, 3 A.2d at 707.

67. *Id.* The current Third Class City Act employs language consistent with *Schmid*: "When the examination of any such person is compiled and graded, and if the mark is passing, then such grading or percentage as the examination merits shall be increased by fifteen per centum." 53 PA. CON. STAT. § 39405 (1951).

68. *Maurer v. O'Neill*, 83 A.2d 382 (Pa. 1951). Chief Justice Drew, joined by Justices Bell, Chidsey, and Jones, wrote the opinion of the court. Justice Stearne, joined by Justices Ladner and Stern, dissented vigorously, finding no distinction between an appointment and a promotion, disagreeing with the majority that non-veterans almost always become the

Philadelphia Fire Bureau Captain promotion examination, but despite scoring higher than several veterans, was ranked lower on the eligibility list than Bonus-augmented veterans.⁶⁹ Using the successful *Schmid* reasoning, Braden argued that the promotional Bonus was unconstitutional class legislation.⁷⁰

The supreme court concluded that the *Schmid* test validated Braden's claim.⁷¹ The court distinguished an "appointment" from a "promotion," affirming that military-developed traits positively impact an appointee's performance of governmental duties.⁷² Benefit, however, does not extend to promotional positions for, as the court reasoned, after time, the non-veteran develops abilities equal to the veteran's.⁷³ Consequently, because the Bonus placed too great an emphasis on the value of military experience relative to a promotional position (i.e., it was not reasonably related to employing a more able public servant), the court struck down the promotional Bonus as "unreasonable and class legislation and therefore unconstitutional."⁷⁴

While it has formulated and employed the test to determine the constitutionality of veterans' preference, the Supreme Court of Pennsylvania has yet to rule on the issue of what type of military service invokes the Act. The commonwealth court addressed this matter on at least two occasions: *Herskovitz v. State Civil Serv. Comm'n*⁷⁵ and *Pontious v. Rippy*.⁷⁶

veterans' equals, and concluding that the matter falls within the province of the legislature. *Id.* at 385-86 (Stearne, J., dissenting). The statute in question was the Veterans' Preference Act of May 22, 1945, Pub. L. No. 837, as amended. *O'Neill*, 83 A.2d at 385-86 (Stearne, J., dissenting).

69. *O'Neill*, 83 A.2d at 382. The ten-point promotion Bonus is distinguishable from the fifteen-point *Schmid* bonus because while the 1945 Veterans' Preference Act in *O'Neill* required the veteran to pass the examination to receive the Bonus, in *Schmid*, the Bonus was awarded even when a veteran did not achieve a passing mark. *Id.* Further, *O'Neill* concerned a promotional bonus while *Schmid* concerned an original appointment bonus, a preference the *O'Neill* court conceded was constitutional. *Id.* at 382-83.

70. *Id.* "Class legislation" is a law that confers benefits on an arbitrarily selected group. BLACK'S LAW DICTIONARY 249 (6th ed. 1991).

71. *Id.* at 384. Chief Justice Drew was a member of the unanimous *Schmid* court. See *supra* note 56 and accompanying text.

72. *Id.* at 373.

73. *O'Neill*, 83 A.2d at 373.

74. *Id.* In its 1975 reenactment of the Veterans' Preference Act, 51 PA. CON. STAT. § 7101-09 (1975), the legislature included identical promotional bonus language as that at issue in *O'Neill*. In a later action, the Supreme Court of Pennsylvania again held the promotional bonus to be arbitrary and, therefore, unconstitutional. *Hoffman v. Township of Whitehall*, 677 A.2d 1200, 1203 (Pa. 1996).

75. *Herskovitz v. State Civil Serv. Comm'n*, 534 A.2d 160 (Pa. Commw. Ct. 1987). Judge MacPhail wrote the opinion for the majority, in which Colins and Craig, JJ., participated.

Herskovitz involved three candidates — Richard Herskovitz, Louis Cocheres, and Albert Strohecker, (collectively “Petitioners”) — who applied for appointments as administrative law judges with the Pennsylvania Public Utility Commission, positions that fall under the State Civil Service Commission (“State Commission”) selection procedures.⁷⁷ Each petitioner had enlisted in either the Reserves or National Guard, completed the associated active duty training, and completed the part-time service obligation prior to the State’s recruitment.⁷⁸ The State Commission interpreted the Act as awarding veterans’ preference only to soldier candidates who performed full-time military duty; thus, the State Commission refused to award veterans’ preference to the petitioners.⁷⁹

The commonwealth court reversed the State Commission’s decision by extending the definition of “armed forces of the United States” to include the Reserves.⁸⁰ This extension resulted from a two-part analysis: (1) whether awarding the preference to Reservists and National Guard members is consistent with the Act’s intent, and (2) whether part-time military service is consistent with the military service contemplated by the Act.⁸¹

The *Herskovitz* court analyzed the Act’s intent by applying section 1921(a) of the Statutory Construction Act: a law’s purpose is a direct function of the legislature’s intent as gleaned from the law’s plain wording in all of its provisions.⁸² The court found what

Crumlish, P.J., wrote a dissenting opinion, in which Palladino, J., joined. *See supra* notes 22-28.

76. *Pontious v. Rippy*, 589 A.2d 1188 (Pa. Commw. Ct. 1991). Silvestri, S.J., wrote the opinion of the court, in which Kelley, J., joined. Doyle, J., filed a concurring opinion.

77. *Herskovitz*, 534 A.2d at 160. The State Civil Service Commission oversees Commonwealth of Pennsylvania employment practices, which are governed by the Civil Service Act, 71 Pa. Cons. Stat. §§ 741.1 -741.1005 (1941).

78. *Herskovitz*, 534 A.2d at 160, 161. After receiving an honorable discharge from his full Reserve commitment, Strohecker enlisted in the National Guard and was a Guard member at the time of the litigation. *Id.* at 161.

79. *Id.* at 161. Although both *Herskovitz* and *Sicuro* focus on Reserve members, their issues differ: *Herskovitz* concerned Reservists’ preclusion from veterans’ preference awards, while *Sicuro*, admitting Reservists’ eligibility, concerned the time at which the preference is awarded.

80. *Herskovitz*, 534 A.2d at 163.

81. *Id.* at 161-62. The court also examined the State Commission’s argument that 51 Pa. Con. Stat. section 103 required it to conform to federal veteran policies. *Id.* at 162. The Commission asserted that because federal veterans’ preference is limited to those who serve at least 181 consecutive post-training active duty days, compliance with section 103 required it to deny Herskovitz the ten-point bonus. *Id.* The court rejected this argument, citing the exclusivity-in-preference provision of 51 Pa. Con. Stat. section 7109 and 51 Pa. Con. Stat. section 103’s intent of uniformity in non-preference matters. *Id.* at 162-63.

82. *Id.* at 161. The Statutory Construction Act, 1 Pa. Con. Stat. section 1921 (1975),

it termed "a clear statement of legislative intent" in the Act's section 7102(a), which listed "discipline and experience represented by his military training and for the loyalty and public spirit demonstrated by his service for the preservation of his country" as the legislature's reasons for applying the Bonus.⁸³ Believing that these reasons describe part-time Reservists as much as full-time soldiers, the court concluded that the legislature intended the Act to reach Reservists.⁸⁴ Additionally, the court found intent to reach the Reservists in the Act's lack of language limiting the preference to full-time soldiers and in its clear language covering "a person . . . who served or hereafter serves in the armed forces of the United States . . . since July 27, 1953."⁸⁵

In its second analysis of whether Herskovitz' level of military service was consistent with the Act's idea of military service, the court reviewed the nature of the Reserves.⁸⁶ The Act awards preference to those who served in the United States armed forces or any associated women's organization and holds an honorable discharge from such service.⁸⁷ Although the Act mentions neither the Reserves nor the National Guard specifically, the court concluded that both branches are so federal in nature as to be included within the United States armed forces — as evidenced by

reads as follows:

§ 1921. Legislative intent control.

(a) The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.

(b) When the words of a statute are clear and free from all ambiguity the letter of it is not to be disregarded under the pretext of pursuing its spirit.

(c) When the words of a statute are not explicit, the intention of the General Assembly, may be ascertained by considering, among other matters:

The occasion and necessity for the statute.

The circumstances under which it was enacted.

The mischief to be remedied.

The object to be obtained.

The former law, if any, including other statutes upon the same or similar subjects.

The consequences of the particular interpretation.

The contemporaneous legislative history.

Legislative and administrative interpretations of such statute.

1 PA. CON. STAT. § 1921 (1975).

83. *Herskovitz*, 534 A.2d at 161.

84. *Id.* The court noted that "continuous service" distinguished between part-time and full-time military service but characterized the disruptions as similar. *Id.*

85. *Id.* (quoting 51 PA. CON. STAT. § 7101 (1975)).

86. *Herskovitz*, 534 A.2d at 162.

87. 51 PA. CON. STAT. § 7101 (1975).

their members' federal institution training, potential overseas duty and involvement in the "United States Total Force Policy."⁸⁸ Now included in the definition of "armed forces," the petitioners were entitled to the preference as a result of their active training and service in the Reserve or National Guard.⁸⁹ The commonwealth court further defined eligibility for veterans' preference in *Pontious v. Rippy*, a case concerning whether the preference may be awarded only to those who served during a time of armed conflict.⁹⁰ Pontious served in the United States Marine Corps from 1974 until he was honorably discharged in 1977.⁹¹ He passed the Johnsonburg Borough police officer examinations in 1985 and in 1987, but despite being each eligibility list's sole veteran, was bypassed for appointment by the borough council.⁹² Citing the Act's mandatory appointment provision, he brought an action in mandamus to compel his appointment.⁹³ The borough contended that it properly denied the preference because it interpreted the Act to apply only to veterans who served during a time of armed conflict and Pontious' service did not coincide with such a time.⁹⁴ The commonwealth court ruled against the borough, finding the restrictive interpretation conflicted with the plain meaning of the Act: a soldier eligible for the preference is one who served in

88. *Herskovitz*, 534 A.2d at 162. See *Insurance Fed'n of Pa. v. Foster*, 587 A.2d 865 (Pa. Commw. Ct. 1991) (citing *Consumers Educ. and Protective Ass'n v. Nolan*, 368 A.2d 675 (Pa. 1977) for the proposition that legislative omission does not automatically exclude a matter from an Act's intent).

89. *Id.* at 163.

90. *Pontious*, 589 A.2d at 1189.

91. *Id.*

92. *Id.*

93. *Id.* "Mandamus" is an order issued by a superior court that commands a governmental entity to discharge its duty. BLACK'S LAW DICTIONARY 961 (6th ed. 1990). Pontious' authority for the mandatory selection was 51 PA. CON. STAT. § 7104(b):

Whenever any soldier possesses the requisite qualifications, and his name appears on any eligible . . . list, certified . . . as a result of any such civil service examination, the appointing . . . power in making an appointment . . . to a public position shall give preference to such soldier, notwithstanding, that his name does not stand highest on the eligibility . . . list.

51 PA. CON. STAT. § 7104(b) (1975). The mandatory preference provision was not directly at issue in *Sicuro*.

94. *Pontious*, 589 A.2d at 1189. In ruling for the borough, the trial court held that veterans' preference was not available to soldiers who did not serve during a time of armed conflict. *Id.* This ruling prompted Pontious to assert that his military service, begun in 1974, coincided with the end of the Vietnam War, a time of armed conflict. *Id.* The trial court, however, ruled that the Vietnam War concluded on January 28, 1973, the date of the Paris Peace Accord signing. *Id.* Pontious raised this issue in the commonwealth court, whose holding precluded the need to rule on this matter. *Id.* at 1191 n.5.

armed conflict "or hereafter serves in the armed forces of the United States . . . since July 27, 1953 . . . and who has an honorable discharge from such service."⁹⁵ The court ordered the borough to appoint Pontious to a position as a Johnsonburg police officer because Pontious honorably served after July 27, 1953.⁹⁶

Pontious is equally pertinent for Judge Doyle's concurrence, in which he fully agreed with the court's reasoning but warned of its ramifications.⁹⁷ Questioning whether the legislature intended such a result, Judge Doyle foresaw a marked expansion in the application of veterans' preference, characterizing the decision as mandating preference to honorably discharged soldiers regardless of the brevity of their service.⁹⁸

The *Sicuro* decision has clarified a confused area of Pennsylvania law. Prior to its publication, public employers could rely on only one appellate level decision, *Herskovitz*, as they wrestled with Reservists' inclusion in the Act, and a fair *Herskovitz* conclusion runs counter to the *Sicuro* holding.

Although it was not specifically asked to decide whether the Act's Bonus provision reaches currently-committed Reservists, the *Herskovitz* court on three occasions indicated a positive direction. In characterizing Reservists' military-provided discipline and experience as equal to that of full-time soldiers, the court employed present tense to describe the Reservists' military service.⁹⁹ The court also wrote in present tense when it defined a "soldier" as one who "served or is serving," labeling such as the Act's clear language.¹⁰⁰ In both cases, the former discussing the Act's intent

95. *Id.* at 1190 (citing 51 PA. CON. STAT. § 7101 (1975)). The term "soldier," as representing one eligible for veterans' preference, was originally made part of the Act of May 22, 1945, Pub. L. No. 837, but it did not refer to one who "hereafter serves" until the amended Act of January 25, 1966, Pub. L. No. 1545. *Pontious*, 589 A.2d at 1190.

96. *Pontious*, 589 A.2d at 1190. The court also ordered a separate hearing to determine compensatory damages. *Id.* at 1191. The court awarded Pontious the police officer position because the borough had wrongfully appointed another; had the borough not appointed anyone during his term of eligibility, Pontious would have had no right to an appointment. See *Yuska v. Civil Serv. Comm'n*, 514 A.2d 297 (Pa. Commw. Ct. 1986).

97. *Pontious*, 589 A.2d at 1191 (Doyle, J., concurring).

98. *Id.*

99. *Herskovitz*, 534 A.2d at 161. The court stated, "We also believe that one who serves in the Pennsylvania National Guard or in the U.S. Army Reserve receives the same discipline and experience of military training as those engaged in full-time active service and that the Guard or Reserve voluntary enlistments demonstrate the same public spirited service. . . ." *Id.*

100. *Id.* at 162. The court stated, "[T]he clear language of the statute is that a soldier includes any person who served or is serving in the armed forces of the United States." *Id.* The Act, however, never employs "is serving;" the actual language is "served or hereafter

and the latter construing the act's language, the court appears to address current Reservists. These statements, together with the court's equation of active-duty Reserve training with active military service, led a number of public employers to expand the definition of "soldier" to include a currently-obligated Reservist.¹⁰¹

The *Sicuro* court precluded obligated Reservists from veterans' preference, thereby dispelling any confusion relative to their rights under the Act.¹⁰² Unlike *Herskovitz*, the court directly addressed non-separated Reservists with three propositions: (1) Reserve active-duty training alone does not satisfy the type of military service the Act contemplates, (2) Reservists gain Bonus eligibility upon concluding their full military obligation, and (3) Reservists must be "soldiers" at or before a qualifying examination in order to enjoy the benefit of the Bonus.¹⁰³

A determination of whether *Sicuro* properly resolved Reservists' Bonus eligibility requires analysis by the standard veterans' preference proof: the *Schmid* test.¹⁰⁴ The *Schmid* test validates the Bonus if the basis of the preference (status as a veteran) is reasonably related to the goal (able execution of public duties).¹⁰⁵ Applying *Schmid* to *Sicuro*, obligated Reservists are Bonus eligible only if their training time (the point at which they were honorably discharged) results in the "discipline," "experience," "loyalty," and "public spirit" the Act seeks to reward.¹⁰⁶

It appears clear that Reserve active-duty training does not satisfy the Act's intent. The legislature designed the Act to reward soldiers for their national service, to compensate them for delaying professional pursuits, and to take advantage of military-provided training and experience.¹⁰⁷ Soldiers satisfy each of these three

serves." 51 PA. CON. STAT. § 7101 (1975).

101. After *Herskovitz*, but prior to *Sicuro*, the Commonwealth concluded that "currently-committed Reservists" are "soldiers" when they are honorably discharged from active duty training and are awarded the Bonus accordingly. See Pennsylvania Dept. of Community Affairs, *Model Rules and Regulations for a Municipal Civil Service Commission* (1992) (currently-committed Reservists who earned honorable discharges from Reserve training are eligible for the Bonus). Appellants Brief at Exhibit 1. See also Governor's Office Management Directive, No. 580.21, 1992 (currently-committed Reservists who have been honorably discharged from active duty training are eligible for veterans' preference in state civil service positions) Appellant's Brief at Exhibit 2.

102. *Sicuro*, 684 A.2d at 236-37.

103. *Id.*

104. *Schmid*, 3 A.2d at 704. See *Sicuro*, 684 A.2d at 237; *O'Neill*, 83 A.2d at 383; *Brickhouse*, 656 A.2d at 486; *Hoffman*, 677 A.2d at 1202.

105. *Brickhouse*, 656 A.2d at 486.

106. 51 PA. CON. STAT. § 7102 (1975). See *Schmid*, 3 A.2d at 704.

107. *Sicuro*, No. GD 95-12924 at 11.

factors by completing a substantial period of service — the three to four months required for a Reservist training discharge is not substantial and hence does not achieve any of the legislature's goals. As stated by the *Sicuro* trial court, Reservists "have not made any contribution of service that would justify a veterans' preference; they have simply gained the training necessary for them to begin to make a contribution."¹⁰⁸ The Statutory Construction Act's analysis validates this conclusion. When ambiguous language or multiple interpretations (such as whether "honorable discharge" includes separation from Reserve training) cloud an act's intent, the Statutory Construction Act charges courts with distilling the legislature's statutory design.¹⁰⁹ The judicial analysis includes review of the act's goal, a presumption against absurd results, and a preference to public over private interests.¹¹⁰ Had it held differently, the *Sicuro* court would have rewarded job applicants who offered the same skills as their competitors who never enlisted in the military. Granting preference without gaining return is unreasonable because it only works to the private advantage of current Reservists for their acts of enlistment without regard to any advantages to the public employer.¹¹¹ The *Schmid* court warned against attaching unwarranted value to military service.¹¹² The *Sicuro* court heeded this warning by ruling that advantages associated with military skills and experience, as well as rewards for public spirit, are a function of a successful and completed military tenure.

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108. *Id.*

109. Pennsylvania Fin. Responsibility Assigned Claims Plan v. English, 664 A.2d 84, 87 (Pa. 1995).

110. *Id.*

111. The trial court judge viewed the greatest concern as the elimination of any meaningful veterans' preference because the City's practice focused the preference on military enlistment, not on the traits gained and service completed as contemplated by the Act. *Sicuro*, No. GD 95-12924 at 19.

112. *Schmid*, 3 A.2d at 704.

